IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.837 OF 2006

Sagarika Acoustronics Pvt.Ltd. .. Petitioner.

V/s.

Union of India & Others .. Respondents.

Mr.Rohan Shah with Mr.Anil Wani & Mr.Mehul Shah i/b. ANS Law Associates for the petitioner.

Mr.R.V. Desai, senior counsel with Mr.Y.R. Mishra i/b. Dr.T.C. Kauahik for the respondents.

CORAM : R.M. LODHA &
J.P. DEVADHAR, JJ.

DATED : 7TH APRIL, 2006.

P.C. :

Heard.

2. By this writ petition, the petitioner seeks to impugn the two orders passed by the Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench at Mumbai (hereinafter referred to as 'the Tribunal'). These two orders were passed by the Tribunal on 22nd August, 2005 and 16th November, 2005. By the order dated 22nd August, 2005, the Tribunal have rejected the petitioner's application for complete waiver of pre-deposit but partially granted the application by asking the petitioner to deposit a sum of Rs.1,40,00,000/- towards duty. The

petitioner was directed to pay the duty by 30th September, 2005. The petitioner was directed to report compliance which he did not and by the subsequent order dated 16th November, 2005, the Tribunal dismissed the appeals for non-compliance.

3. The contention of the learned counsel for the petitioner is that the petitioner-company is a sick industrial undertaking and that reference filed by the petitioner is pending before the BIFR under the Sick Industrial Companies (Special Provisions) Act, 1985 (for short 'Act of 1985). The learned counsel would submit that since the petitioner is a sick industrial company, it brought to the notice of the Tribunal that undue hardship would be occasioned to the company, if they are directed to deposit any amount. He also submitted that since the order dated 22nd August, 2005 passed by the Tribunal did not specifically deal with this aspect, the application for modification was made but without disposing of the said application, the appeals have been dismissed by the order dated 16th November, 2005. It was, thus, submitted by the learned counsel for the petitioner that the Tribunal did not exercise its jurisdiction in accordance with the settled principles while considering the application for waiver of pre-deposit.

4. In opposition to the submissions of the learned counsel for the petitioner, Mr.R.V. Desai, the learned senior counsel for the revenue invited our attention to the judgment of the Supreme Court in the case of Metal Box India Limited V/s. Collector of Central Excise, Mumbai, 2003 (155) E.L.T. 13, and submitted that the payment of pre-deposit required under Section 35F of the Central Excise Act, 1944 does not fall under any of the enumerated categories under Section 22 of the Act of 1985 and on that ground the petitioner was not entitled to waiver of pre-deposit.

5. In Metal Box India Limited (supra), the Supreme Court ruled thus :

> "------- and, secondly, Section 22 of the Sick Industries Act, provides relief in regard to the proceedings which relate to (a) winding up of the industrial company; (b) execution, distress or the like against any of the properties of the industrial company, (c) the appointment of a receiver in respect thereof, and (d) proceeding in regard to suit for recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company. Payment of pre-deposit covered under Section 35F of the Central Excise Tax Act, 1944 does not fall under any of the above-mentioned categories in Section 22 of the Sick Industries Act."

6. It is, thus, clear in the light of Section 22

of the Act of 1985 and the law laid down by the Supreme Court as aforenoticed that the payment of pre-deposit required under Section 35F of the Central Excise Act, 1944 is not covered by any of the categories under Section 22 of the Act of 1985. It would be, thus, seen that merely because a company is declared to be a sick industrial undertaking, that would not entitle the company to waiver of pre-deposit on that ground alone. The Tribunal though held that the company has not been able to make out a case of complete waiver of pre-deposit, the financial aspect of the company vis-a-vis. undue hardship was kept in mind and considering the financial hardship pleaded by the company on the ground that it was sick industrial company, the Tribunal asked the petitioner to pre-deposit an amount of Rs.1,40,00,000/- towards duty in place of the demand of Rs.4,72,12,188/- towards duty and further amount of Rs.4,72,12,188/- towards penalty. In this view of the matter, the Tribunal cannot be said to have erred in exercise of its jurisdiction in passing the order dated 22nd August, 2005.

7. The Tribunal gave time to the company to pre-deposit the amount of Rs.1,40,00,000/- by 30th September, 2005 but admittedly the petitioner did not deposit the amount. As a sequetal the two appeals

were liable to be dismissed and the Tribunal cannot be said to have erred in dismissing the appeals for non-compliance of the statutory requirement under Section 35F read with order dated 22nd August, 2005.

8. If the petitioner had made any application for modification of order dated 22nd August, 2005 it ought to have pressed the same before the Tribunal before the order dated 16th November, 2005 came to be passed. In this view of the matter, we do not deem necessary to deal with the application for modification of the order dated 22nd August, 2005 said to have been made by the petitioner.

9. The writ petition is liable to be dismissed and is dismissed.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)